

California Medical Association



NOTICES AND REPORTS

Resolutions No. 1-63 and No. 35-63, introduced in the 1963 meeting of the House of Delegates, and Resolutions No. 7-64 and No. 86-64, introduced in the 1964 meeting of the House, directed that studies be made and guidelines developed to improve the administration of medical discipline under the Medical Practice Act. Resolution No. 35-63 specifically recommended that incompetence, immoral or unethical behavior injurious to patients, and psychiatric disabilities which interfere with the proper medical management of patients be declared unprofessional conduct.

In 1964, the House of Delegates directed that a study be made particularly of California Senate Bill No. 1514, which proposed the creation of a medical disciplinary board separate from the State Board of Medical Examiners. It also directed that definite programs be developed in the area of incompetence or disability and that the concept of rehabilitation rather than discipline be urged. The Council ad hoc committee was asked "to submit a report of its deliberations to the House of Delegates at least three months prior to its next meeting."

The Council ad hoc committee requested the editor of CALIFORNIA MEDICINE to publish the testimony given by Doctor Carl E. Anderson on behalf of CMA, and by Doctor Justin J. Stein on behalf of the State Board of Medical Examiners, before the Senate Fact Finding Committee on Public Health and Safety on September 22, 1964 and October 13, 1964. It is hoped that not only the delegates but all members of the profession might be interested in reviewing these well-considered proposals.

Problem Areas in Medical Discipline

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MR. CHAIRMAN and members of the Senate Fact Finding Committee on Public Health and Safety:

I am Carl E. Anderson of Santa Rosa, a practicing physician specializing in the field of orthopedic surgery, and am chairman of the California Medical Association Council, which is its governing body. The opportunity to discuss with you Senate Resolution No. 204 and Senate Bill 1514, and the general topic of medical discipline, is appreciated. This presentation has been authorized by the California Medical Association.

*A statement by the chairman of the Council of the California Medical Association, before the Senate Fact Finding Committee on Public Health and Safety, at San Francisco, September 22, 1964.

It occurs to me that, through the hearings of the committee, you seek to inquire whether or not everything is being done to assure the public that the physician who treats any patient is competent and ethical and that the treatment given will be up to the standard of care acceptable to the community and the profession at large.

At the present time, a great deal of voluntary screening, review, supervision, regulation and disciplinary action takes place in county and state medical societies and in established hospital medical staffs. For instance, in addition to the requirements of education and licensure, a thorough investigation is conducted by county medical societies concerning the moral and ethical character of applicants for membership. The public is invited to submit to county medical societies, complaints concerning physicians' conduct, overcharges and other matters pertaining to the profession's integrity. These complaints are carefully investigated and erring members are appropriately admonished and disciplined. In order to be admitted to the medical staff of a modern hospital, a physician needs to prove his ability to render the type of care for which he has been trained and in which he has experience.

Through an audit procedure and a critical analysis of individual case records, various committees of a hospital medical staff review the care that is rendered. Thus, the members of the staff as a whole enhance their professional education, and the standard of care rendered is constantly improved.

The weaknesses in the system of voluntary, self-imposed discipline result from three principal factors:

1. Lack of legal sanctions.
2. Lack of immunity for those who testify before medical society and hospital staff committee hearings.
3. Incomplete appeal mechanisms.

The State Board of Medical Examiners has two major functions:

First, it conducts examinations, and licenses eligible applicants for a Physician's and Surgeon's Certificate. This function is, in general, performed in an admirable fashion.

The second function of the Board relates to disciplinary action, which it does quite effectively, against individuals with the criminal violations set forth in the statutes. It is hampered by the lack of manpower and of statutory authority from doing a more effective job in areas of unprofessional conduct, incompetence and dangerous antisocial behavior. It is also felt that it should be given greater responsibility to assist in the rehabilitation of erring physicians to a useful place in society.

In 1963, the California Medical Association House of Delegates adopted resolutions recommending that the State Board of Medical Examiners, in addition to its present power, be given broader authority to discipline physicians who habitually engage in unethical and immoral conduct injurious to patients, those who become professionally incompetent and those with psychiatric disability which interferes with proper treatment and care and thereby endangers patients. Again at the 1964 meeting of the House of Delegates, two additional resolutions were introduced urging the California Medical Association to study, in cooperation with the State Board of Medical Examiners, ways in which to improve the procedures, functions and duties of the board. An ad hoc committee was appointed to make the necessary studies and report recommendations to this committee of the Senate. I have had the honor of being appointed chairman of that ad hoc committee.

The authority to discipline carries with it the responsibility to rehabilitate. In all the discussions we have held, the thought has been expressed and emphasized that the present authority of the Board to supervise or foster the process of correcting and improving the conduct of an erring licentiate ought to be specifically expanded.

Section 2372 of the Business and Professions Code is entitled "Disciplinary Action." It gives the Board power to "discipline the holder of any certificate." In many cases, it is necessary and appropriate to suspend the right to practice or to revoke a certificate, but in others this penalty is too severe. What conditions of probation can be imposed by the Board are not made clear in the statute.

The concept of retraining and rehabilitation has gained more widespread acceptance since the original passage of the act. We can do, or attempt to do, things in the area of social and professional rehabilitation today that were not previously attempted. This broad power of rehabilitation may be inherent in the present statute, but is not clearly stated and we propose that the supervisory powers of the Board be specifically extended.

In Section 2376.5, the Board is given specific powers to determine terms and conditions to be imposed upon a licentiate when a petition for restoration of a license is granted. This authority should also be available in cases where the Board does not find it necessary to go so far as to revoke or suspend a license.

The probationary authority to discipline and rehabilitate ought to include, but not be limited to, the power to:

- (a) Require a man to obtain additional medical training and pass an oral and/or written, practical, or clinical examination upon completion of the training;
- (b) Require a man to submit to a diagnostic examination by one or more physicians appointed by the board;
- (c) Restrict or limit the extent, scope or type of practice in an appropriate case and enforce such restrictions in all hospitals, whether public or private, as well as in office practice;
- (d) Appoint, in appropriate cases, one or more consultants or proctors to whom a man shall report for supervision and guidance. These consultants should be considered officers of the Board when performing such duties, they should be personally

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immune from suit, and their services should be rendered to the probationer without charge.

Hospital Staffs

Under the present law, hospitals are subject to the provisions of the Hospital Licensing Act administered by the State Department of Public Health. The provisions of that law are aimed at insuring that the institution is a safe and secure place for infirm persons to obtain bed, board, nursing and related services.

On the other hand, hospital medical staff bylaws and other regulations and laws have properly assumed that in most cases, the physicians who prescribe and treat patients in a hospital are self-disciplining with regard to competence in their respective fields and worthy in character and professional ethics. The housing function and medical staff activities are separate and distinct. The first is a matter of protection of the public health and safety comparable to the regulations applicable to many other types of institutions. The second is a matter of competence and behavior, individually and collectively, of the members of a licensed, responsible profession.

The licensure of a hospital as a place of safe accommodation should not be dependent upon the degree of self-discipline of the medical staff, nor should the recognition that the medical staff adequately supervises and regulates its own behavior be dependent upon the safe accommodation provision of the former. Since these two functions relate to totally different spheres of concern for the public good, they should be considered, if the need arises, by those governmental agencies whose responsibilities most nearly correspond to the function in question.

If governmental involvement is necessary, the Board of Medical Examiners is clearly the body to evaluate the adequacy of professional self-discipline in medical staffs. It could readily perform such evaluation by regulation and with a reasonable amount of cooperation from medical and hospital organizations and the Bureau of Hospitals, without in any way interfering with the authority of the latter to inspect, license and regulate the hospital itself as a place of public accommodation. If such authority were given to the Board, we would recommend that it be declared unprofessional conduct for any licensee to regularly treat or prescribe for patients in any hospital the medical staff of which does not provide for regular, periodic evaluation of the standards of care rendered to the patients therein. Hospitals should have established procedures and regulations necessary to carry out and enforce these concepts. The California Hospital

Association joins us in this recommendation and offers its assistance in implementation.

New Areas in Which the Board Could Take Action

The resolutions of the California Medical Association House of Delegates referred to earlier, and the provision of Senate Bill 1514—the bill referred to this committee for interim study—recommend additional grounds upon which the Board can take action against any holder of a certificate. We suggest that it would be appropriate to consider amending sections 2361, 2385, and 2411 of the Business and Professions Code.

Section 2361 provides that the Board “. . . shall take action against any holder of a certificate, who is guilty of unprofessional conduct . . . or whose certificate has been procured by fraud . . .” This section might be amended to state that unprofessional conduct shall include, but not be limited to:

(a) Violation or an attempt to violate any provision of the act or orders and regulations legally established by the Board;

(b) Repeated acts or course of conduct amounting to gross negligence, gross immorality or gross incompetence;

(c) The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his professional practice as a licensee or otherwise, and whether the act is a felony or misdemeanor;

(d) Conduct which would have warranted denial of a license.

Some of the terms suggested are broad. However, similar language is found in many of the licensing acts applicable to various professional and technical groups. I believe we can reasonably assume that the Board and the Attorney General's office will not proceed against a person under such a statute in doubtful cases. The suggested new supervisory mechanisms would furnish other safeguards to insure protection of the rights of an individual as well as of the public.

It has been suggested that by deleting from Section 2411 the three words, “required by law,” the section would be broad enough to permit the Board to take action against a licensee who presented false claims to insurance companies, government agencies and others. This section would then read:

“Knowingly making or signing any certificate or other document . . . which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct within the meaning of this chapter.”

Section 2385 is entitled “Mental Illness.” It now provides that:

"The adjudication of insanity or mental illness, or the voluntary commitment or admission to a *state* hospital of any licentiate for a mental illness shall operate as a suspension of the right to practice of any certificate holder . . ."

It is recommended that this section be amended in two ways: First, the admission of a licensee to any hospital, other than a state hospital, for a mental illness, ought to be cause for an investigation to be conducted by the Board to determine whether any action would be appropriate regarding the right of such certificate holder to practice medicine without limitations.

Second, the Board ought to be given authority to consider and investigate complaints concerning the mental fitness of a licentiate to practice medicine without limitations, in cases in which commitment to a mental hospital is neither necessary nor appropriate. In such cases, the Board might be authorized to act when investigation clearly discloses a pattern of behavior which endangers the public health or safety in the community. Restrictions or limitations other than suspension of a license should be imposed when warranted. In these cases, a hearing should be provided just as is done in all cases other than those involving commitment for mental illness.

The suggested amendments to Section 2361 and Section 2385 would, in some cases, give the Board an option to proceed against the person on the basis of unprofessional conduct or mental illness. In either case, the restrictions ordered by the Board might be essentially the same. One thinks of the element of willfulness in regard to unprofessional conduct. That idea need not be present in cases involving mental illness. It is felt that there are degrees of mental illness that do not warrant commitment, but do call for restrictions to be placed on the practice of medicine by a license holder.

In cases involving commitment or admission to a state hospital for mental illness, the Board is required to institute summary proceedings to suspend a license. It is suggested that the power to proceed summarily be given to the Board in those cases where, after investigation, there is found clear evidence of immediate and continuing threat to the public health and safety if a certain licentiate is permitted to exercise his license to practice medicine. The Board would issue a temporary order of suspension of license, and provide for a hearing to be held within 15 days. This hearing should be in the nature of a proceeding to determine why the order should not be made permanent.

There are not many cases in which it will be necessary for the Board to exercise such summary powers. The existence of this power, in some in-

stances, could prevent occasional gross abuses which now occur.

District Review Committees

In Senate Bill 1514, it is proposed that a new disciplinary board be created. We recommend that the power to license, supervise and discipline the holders of a Physician's and Surgeon's Certificate be retained by the Board of Medical Examiners. In order for the Board to carry on the expanded activity recommended, it should be authorized to establish and create a district review committee in each of the five appellate districts designated for district courts of appeal in Government Code Section 69012. These district committees should be composed of five persons holding a valid Physician's and Surgeon's Certificate. They should be chosen from the district they represent and serve for a term of four years. They should be paid per diem and expenses similar to the provisions made for members of the Board of Medical Examiners. The manner of selecting the district review committee members could be made in any one of several ways. Senate Bill 1514 proposed that all licensed physicians elect the disciplinary board members therein provided for. The district review committees could be elected by physicians in the five districts, or they could be appointed by the Governor or the Board of Medical Examiners.

These committees should have authority to hear contested cases assigned to them by the Board. They need not be assigned only cases involving physicians residing in their district. All hearings conducted should be held in accordance with the provisions of the Administrative Procedures Act. After hearing a case, the committee should prepare a proposed decision in such form that it may be adopted by the Board of Medical Examiners as *the* decision in the case. The Board should be able to adopt the decision in its entirety or reduce or modify it as its discretion dictates.

Such a system will provide greater identification of local areas with problems concerning the standards of integrity and dignity within the profession.

Cost of the Program

Finally, we propose that the cost of this expanded program be borne by the profession, and recommend that Section 2458 be amended by raising the maximum permissible renewal fee from \$20 to \$40.

* * *

We have worked closely with the State Board of Medical Examiners in developing recommendations which will assist in maintaining California's leadership in promoting the best possible health care for its citizens, maintaining the integrity of the mem-

bers of the medical profession, and in promoting standards of practice second to none. We are most grateful for the opportunity to present these views to this committee and assure you of our desire to work closely with you in developing needed amendments.

I would be most happy to answer any questions you have.

Further Testimony*

Senator Stiern and Members of the
Fact Finding Committee:

The California Medical Association appreciates the opportunity of presenting further testimony supplementing that given at your first hearing September 22 in San Francisco.

At that time the State Board of Medical Examiners and the California Medical Association presented a number of suggestions and specific proposals which would give increased statutory latitude and increased manpower to the Board of Medical Examiners in order to achieve the intent of S.B. 1514.

The testimony presented by the Board and by the Association were in general agreement except on the wording of suggested amendments to Section 2385 of the Business and Professions Code relating to disciplinary procedures necessitated by mental illness. Your Committee is aware of the fact that this is a most complex problem and you must certainly appreciate the fact that writing a law on this subject requires most careful consideration, so that both the public and the profession may be wisely but effectively protected. Since September 22, we have made several more attempts to arrive at specific wording of proposed amendments to achieve this purpose. On October 9 a meeting was held by representatives of the California Medical Association, the State Board of Medical Examiners, the California Psychiatric Associations, and the Los Angeles County Medical Association, to further explore this problem. The consensus of this meeting was to the effect that there was general agreement as to areas in which the Board needs additional authority and also recognition of the importance of encouraging rehabilitation of the mentally ill physician under adequate safeguards. Specific language to properly achieve this has not yet been evolved.

I have been authorized to request your Committee to defer action on the mental illness section in order to permit the several organizations intimately concerned with this problem, a little more time to agree on the actual wording of a proposed

amendment. We believe we are fairly close to this now and would jointly agree to have the actual wording submitted to you no later than December 1.

Several other areas in our testimony on September 22 were left uncompletely defined or have perhaps caused some misunderstanding. The subject of the method of selecting the membership of the proposed district subcommittees of the Board, has brought forth from our membership two alternative proposals to be submitted for your consideration:

Proposal A would provide that three members of the five man district subcommittee be elected by the licentiates in the district, with the remaining two positions to be filled by appointment.

The other proposal is offered in the event the Legislature would not accept the election of the subcommittee members by the profession. Proposal B would provide that the subcommittees be appointed by the Board of Medical Examiners.

The thought behind these proposals is that the profession would then have some, but not complete, choice of those who might sit in judgment upon them.

The final area in which it appears that our previous statement was not entirely clear, relates to the area of self-regulation of hospital medical staffs. We are strongly of the opinion that those hospitals which do have organized medical staffs, are doing, or with guidance already available from voluntary organizations, are capable of doing a just and commendable job of quality control and professional self-discipline. There could be no beneficial result from the involvement of any governmental agency in this area of professional discipline.

It is only in the area of those hospitals which do not have an organized medical staff or other review mechanisms that we believe some action is needed. Our recommendation is that the Board of Medical Examiners be given the authority to take action on the grounds of unprofessional conduct against any licentiate who regularly attends or treats patients in a hospital, which does not have an established mechanism for periodic review and evaluation of the medical care rendered therein. Both the California Medical Association and the California Hospital Association offer their assistance to the Board in implementing this recommendation, if it is adopted.

The California Medical Association again extends its thanks to the Fact Finding Committee for the opportunity of making these presentations and wishes to assure the Committee of its continuing desire to be of assistance in developing effective, just and workable legislation for the benefit of the public.

*Statement by Dr. Anderson before the Senate Fact Finding Committee on Public Health and Safety, October 13, 1964, at Los Angeles.